



Eatons

Discrimination by Association – ECJ Rules

The European Court of Justice (ECJ) has handed down its ruling (*Coleman v Attridge Law*) on whether the Disability Discrimination Act 1995 (DDA) properly implements the EU Equal Treatment Framework Directive.

Sharon Coleman, who worked as a legal secretary, brought a claim of disability discrimination and constructive dismissal against her ex-employer. She claimed that she had been treated less favourably than other employees because of her son's disability.

Ms Coleman's son was born with substantial respiratory problems and she requested more flexible working hours in order to care for him. She contended that other mothers at the firm had been granted flexible working hours and permission to work from home to care for children who were not disabled, whereas her request was turned down and she was placed in a pool of staff selected for redundancy. She also claimed to have been subjected to insulting and abusive comments and that this created a hostile working environment which gave her no option but to resign.

Ms Coleman argued that the Equal Treatment Framework Directive affords protection from unfair treatment that arises out of association with a disabled person. However, the wording of the DDA does not appear to allow a person who is not disabled, but who is discriminated against because of another person's disability, to bring a claim. The Employment Tribunal referred the question to the ECJ.

In the Advocate General's view, the purpose of the Directive, as regards employment, is to eliminate all forms of discrimination relating to disability. His opinion was followed by the ECJ, which ruled that the Directive would provide insufficient protection and be rendered less effective if it were restricted only to those who are themselves disabled. In the Court's view, an employee who is the primary carer of a disabled child is protected from direct discrimination and harassment that is related to the disability of their child.

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The case will now return to the London South Employment Tribunal to decide whether the DDA can be interpreted in a way that complies with the Directive as clarified by the ECJ's ruling.

This decision has far-reaching implications. As the Directive also covers discrimination based on religion or belief, age or sexual orientation, employees should also be protected from associative discrimination on these grounds. Employers are advised to take care when considering requests for flexible working arrangements from employees who have caring responsibility for disabled or elderly people and to check their recruitment and equal opportunity policies in the light of this decision.

For advice on all matters relating to employment law please contact Maureen Singleton on Tel: 01274 728 327.

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